

Claimant injured his left knee on September 21, 1995, while working for respondent. He received authorized treatment from Dr. William W. Bohn, an orthopedic physician. The treatment included two surgeries. Following the second surgery, claimant was recalled to a job with Boeing in St. Louis at a wage higher than the wage he earned for respondent. During the course of this case, claimant had some problems with his right knee as well. But he ultimately testified the problems on

the right had resolved. The nature and extent of the impairment to the left lower extremity is the only issue in this appeal.

The treating physician, Dr. Bohn, rated claimant's impairment as 8 percent following the first surgery with 25 percent of the 8 percent, or 2 percent, attributed to an earlier injury to claimant's left knee. Dr. L. F. Glaser, a court-appointed independent medical examiner, concluded claimant had a 46 percent impairment to his left lower extremity but attributed one-third of the impairment to preexisting injury, leaving 31 percent attributed to the current injury. Dr. Glaser attributed a portion of his rating to cruciate laxity, a finding which Dr. Bohn specifically disputed.

The ALJ found claimant has a 22 percent impairment to the left lower extremity with 2 percent of that 22 percent preexisting. Pursuant to K.S.A. 1995 Supp. 44-501(c), the ALJ deducted the preexisting impairment and awarded benefits for a 20 percent impairment to the left lower extremity. On appeal both parties ask that the award be modified and both advance reasons for favoring one over the other. Claimant contends the independent medical examiner should be relied upon, in large part, because he is more neutral. Respondent contends the treating physician is in a better position to evaluate the condition because he has had more experience with claimant's injury. As the arguments point out, there are some reasons for favoring each of the rating physicians. In the end, however, there does not appear to be any reason to rely only on one or the other. The ALJ found the disability to be between Dr. Bohn's rating and Dr. Glaser's rating. The Board agrees with and affirms that finding.

The Appeals Board also adopts as its own the findings and conclusions by the ALJ on all other issues decided.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Robert H. Foerschler on July 9, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Timothy M. Alvarez, Kansas City, MO
John R. Emerson, Kansas City, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director